REMARKS

The Office Action of May 30, 2006, has been received and considered. Of the independent claims, only claim 119 remains rejected. This claim has been amended and is believed to be allowable over the prior art. Reconsideration of the application as amended is requested.

Claim 119 pertains to a wear assembly for attachment to a lip of an excavator. The assembly includes a boss fixed to the lip, a wear member fit over the boss, and a lock to retain the wear member to the lip. As recited in the claim, the lock includes:

1. "a body having an axial hole extending generally parallel to the extension of the slot;" and
2. "a threaded adjustment member threaded into the axial hole of the body such that rotation of the adjustment member causes axial movement of the adjustment member in the axial hole in a direction generally parallel to the lip relative to the body to expand the lock."

Neither US Patent No. 5,088,214 to Jones nor US Patent No. 4,433,496 discloses these two features of the invention. Specifically, these two patents are each without an axial hole in the lock body extending generally parallel to the slot in the wear member, and without a threaded adjustment member threaded into the axial hole for movement therethrough in a direction generally parallel to the lip for expansion of the lock.

As acknowledged by the examiner, US '214 fails to disclose an adjustment assembly of any kind.

US '496 discloses a lock with a C-clamp 26 clamping opposite legs 16, 16' of adapter 15, a bolt 33 extending through a hole in the C-clamp, a nut 35 mounted in the C-clamp to receive the bolt, and a wedge 28 that moves in an arcuate path defined by the front surface of the C-clamp. The bolt is clearly vertical and generally perpendicular to the lip rather than generally parallel to the lip as claimed.

As recited in the claim, the wear member includes an inner side that faces the lip and a

longitudinal slot that opens in the inner side and the rear wall of the wear member to receive the boss fixed to the lip. The hole in the body of the lock is an axial hole that extends generally parallel to the slot in the wear member. The threaded adjustment member is threaded into the hole and is rotated to axially move generally parallel to the lip so as to expand the lock and tighten the mounting of the wear member on the lip. This locking arrangement provides an adjustment capacity that is efficient, easy to use, inexpensive to manufacture, and operates without the need for openings in the lip. Since neither patent teaches these two limitations of the claim, Applicants submit that the claim is allowable for this reason alone.

Nevertheless, there are additional reasons. US '496 has many failings as a teaching reference. US '496 does not have:

- a boss fixed to the lip;
- a longitudinal slot open in the inside surface and rear wall of a leg of the wear member;
- a boss fit within a slot in the leg to provide support to the position of the wear member on the lip;
- a lock maintained to one side of the lip;
- a lock placed in alignment with a slot in the leg;
- a lock body having a hole extending generally parallel to the slot in the leg; or
- a threaded adjustment member that moves generally parallel to the lip.

US '496 uses a Whisler-style locking arrangement, i.e., a wedge-style lock that uses a through-hole in the lip to clamp the opposing legs of the adapter.

While the examiner correctly states that there is no requirement that a feature of one patent be able to be bodily incorporated into the other, there must still be suggestion of the asserted modification. One ordinarily skilled in the art of designing wear assembly for excavating equipment would understand US '496 as disclosing a Whisler-style lock. The examiner has cited no prior art showing a Whisler-style

lock that does not require a through-hole in the lip. It is not proper to simply conclude that it would have been obvious for one of ordinary skill in the art to make a claimed modification with no suggestion at all.

It is not proper to simply start with the teaching of the invention and conclude that the prior art "could" be modified to work in the same way. Rather, the examiner is to consider what the teachings of the prior art would have been to one of ordinary skill in the art. In this case, it is submitted that one of ordinary skill in the art would have concluded that US '496 taught the use of a Whisler-style lock where the wedge did not have to be hammered into the opening. One of ordinary skill in the art would not review US '496 and conclude that this lock could be modified to be used without a through-hole (i.e., to be maintained to one side of the lip), have the bolt reoriented so that it extended generally parallel to the lip instead of perpendicular to the lip, or be used to secure a wear member that is fit over a boss.

The examiner argues that US '496 broadly teaches that it is known in the art to use an adjustable locking assembly to tighten the fit and eliminate the looseness in a wear assembly. Even if it does, claim 119 is not seeking to cover such a broad proposition. Rather, claim 119 is directed to a wear assembly where the wear member fits over a boss fixed to the lip, where the lock is maintained to one side of the lip, and where the lock includes an axial hole and a threaded adjustment member that moves generally parallel to the lip to expand the lock and tighten to the mounting of the wear member on the lip. Claim 119 pertains to a specific kind of adjustment for a particular kind of wear assembly.

For all of the above-discussed reasons, Applicants submit that claim 119 should be allowed. A notice to this effect is earnestly solicited.

Finally, Applicants acknowledge that a supplemental reissue declaration is needed, but requests that this requirement be held in abeyance until agreement is reached in regard to all of the claims.

Respectfully submitted,

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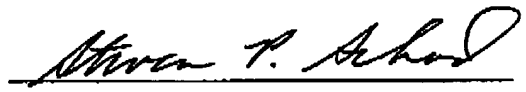
By: 

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